

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208233

DATE: August 10, 1982

MATTER OF: Racoa International, Inc.

DIGEST:

1. When an agency determines that a small business is nonresponsible, the law requires that the matter be referred to the Small Business Administration which conclusively determines the bidder's responsibility by issuing or declining to issue a certificate of competency.
2. A small business bidder which fails to file an application with the Small Business Administration for a certificate of competency does not avail itself of the possible protection provided by statute and regulation against an unreasonable determination by a contracting officer as to its responsibility.

Racoa International, Inc., protests the award of a contract to anyone other than itself under invitation for bids (IFB) No. DAKF57-82-B-0132 issued by the Department of the Army. We summarily deny the protest.

The Army advises that Racoa was the low bidder, but was found nonresponsible by the contracting officer. Since Racoa is a small business, the contracting officer's negative responsibility determination was referred to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). Racoa, however, declined to file an application for a COC, apparently for the same reasons it filed its protest here.

Racoa contends that the contracting officer acted improperly by requiring a COC as a condition of award. Racoa states that there is no requirement in the IFB, or

generally, that a bidder obtain a COC before award. Racoa argues that this requirement gives its competitors an unfair advantage since it has been applied only to Racoa.

Racoa apparently misunderstands the nature of the COC requirement. Whenever an agency determines that a small business bidder is nonresponsible and thus ineligible for contract award, the law requires that the matter be referred to SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a COC, 15 U.S.C. § 637 (b)(7) (1976 and Supp. III 1979). This procedure is intended to provide protection for small business concerns against a contracting officer's unreasonable determination as to their responsibility. Forest & Land Managers, Inc., B-200130, March 2, 1981, 81-1 CPD 154.

Therefore, in this case, the Army was simply acting in compliance with a statutory requirement which, in fact, exists for the benefit of small businesses. If any competitive advantage may be said to result from this requirement, it operates in favor of Racoa rather than its competitors.

In addition, a small business which fails to file a COC application with SBA does not avail itself of its administrative remedy provided by statute and regulation. Id. Under these circumstances, we will not undertake a review of a contracting officer's nonresponsibility determination since this, in effect, would amount to a substitution of our Office for the agency specifically authorized by statute to review such decisions. General Automotive, Diesel and Industrial Repair, Inc., B-204140, September 8, 1981, 81-2 CPD 203.

The protest is summarily denied.

Milton J. Fowler
for Comptroller General
of the United States